

49446

THIS TRUST DEED, made this 2nd day of June 1978 between

GARY D. SMELCER

as grantor, William Sisemore, as trustee, and  
KLAMATH FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation organized and existing under the laws of the  
United States, as beneficiary;

## WITNESSETH:

The grantor irrevocably grants, bargains, sells and conveys to the trustee, in trust, with power of sale, the property in  
Klamath County, Oregon, described as:

A portion of the S 1/2 of the SW 1/4 of the NW 1/4 of Section 11,  
Township 39 South, Range 9 East of the Willamette Meridian, in  
the County of Klamath, State of Oregon, more particularly described  
as follows:

Beginning at a point on the East-West quarter line which lies  
North 88° 57' East a distance of 1017.0 feet from the iron axle  
which marks the one quarter section corner common to Sections 10  
and 11, Township 39 South, Range 9 East of the Willamette Meridian  
and running thence, continuing North 88° 57' East along the East-  
West quarter line a distance of 67.5 feet to an iron pin; thence  
North 1° 12' West parallel to the West section line of said Section  
11 a distance of 331.4 feet to a point; thence South 88° 57' West  
parallel to the East-West quarter line a distance of 67.5 feet to  
a point; thence South 1° 12' East a distance of 331.4 feet, more  
or less, to the point of beginning.

which said described real property is not currently used for agricultural, timber or grazing purposes,

together with all and singular the appurtenances, tenements, hereditaments, rents, issues, profits, water rights, easements or privileges now or  
hereafter belonging to, derived from or in anywise appertaining to the above described premises, and all plumbing, lighting, heating, venti-  
lating, air-conditioning, refrigerating, watering and irrigation apparatus, equipment and fixtures, together with all awnings, venetian blinds, floor  
covering in place such as wall-to-wall carpeting and linoleum, shades and built-in appliances now or hereafter installed in or used in connection  
with the above described premises, including all interest therein which the grantor has or may hereafter acquire, for the purpose of securing  
performance of each agreement of the grantor herein contained and the payment of the sum of **EIGHTEEN THOUSAND FOUR**  
**(\$18,400.00)** Dollars, with interest thereon according to the terms of a promissory note of even date herewith, payable to the  
beneficiary or order and made by the grantor, principal and interest being payable in monthly installments of \$ **160.75** commencing  
**July 25** 19 **78**

This trust deed shall further secure the payment of such additional money,  
if any, as may be loaned hereafter by the beneficiary to the grantor or others  
having an interest in the above described property, as may be evidenced by a  
note or notes. If the indebtedness secured by this trust deed is evidenced by  
more than one note, the beneficiary may credit payments received by it upon  
any of said notes or part of any payment on one note and part on another,  
as the beneficiary may elect.

The grantor hereby covenants to and with the trustee and the beneficiary  
herein that this said premises and property conveyed by this trust deed are  
free and clear of all encumbrances and that the grantor will and his heirs,  
executors and administrators shall warrant and defend his said title thereto  
against the claims of all persons whomsoever.

The grantor covenants and agrees to pay said note according to the terms  
thereof and, when due, all taxes, assessments and other charges levied against  
said property; to keep said property free from all encumbrances having pre-  
cedence over this trust deed; to complete all buildings in course of construction  
or hereafter constructed on said premises within six months from the date  
hereof or the date construction is hereafter commenced; to repair and restore  
promptly and in good workmanlike manner any building or improvement on  
said property which may be damaged or destroyed and pay, when due, all  
costs incurred therefor; to allow beneficiary to inspect said property at all  
times during construction; to replace any work or materials unsatisfactory to  
beneficiary within fifteen days after written notice from beneficiary of such  
fact; not to remove or destroy any building or improvements now or hereafter  
constructed on said premises; to keep all buildings and improvements now or  
hereafter erected upon said property in good repair and to commit or suffer  
no waste of said premises; to keep all buildings, property and improvements  
now or hereafter erected on said premises continuously insured against loss  
by fire or such other hazards as the beneficiary may from time to time require,  
in a sum not less than the original principal sum of the note or obligation  
secured by this trust deed, in a company or companies acceptable to the be-  
neficiary, and to deliver the original policy of insurance in correct form and with  
approved loss payable clause in favor of the beneficiary attached and with  
premium paid, to the principal place of business of the beneficiary at least  
fifteen days prior to the effective date of any such policy of insurance. If  
said policy of insurance is not so tendered, the beneficiary may in its own  
discretion obtain insurance for the benefit of the beneficiary, which insurance  
shall be non-cancellable by the grantor during the full term of the policy thus  
obtained.

That for the purpose of providing regularly for the prompt payment of all taxes,  
assessments, and governmental charges levied or assessed against the above described  
property and insurance premium while the indebtedness secured hereby is in excess of 80%  
of the lesser of the original purchase price paid by the grantor at the time the loan was  
made or the beneficiary's original appraisal value of the property at the time the loan  
was made, grantor will pay to the beneficiary in addition to the monthly payments of  
principal and interest payable under the terms of the note or obligation secured hereby  
on the date installments on principal and interest are payable an amount equal to 1/12  
of the taxes, assessments, and other charges due and payable with respect to said property  
within each succeeding 12 months and also 1/30 of the insurance premium payable with  
respect to said property within each succeeding three years while this Trust Deed is in  
effect as estimated and directed by the beneficiary. Beneficiary shall pay to the grantor  
interest on said amounts at a rate not less than the highest rate authorized to be paid  
by banks on their open passbook accounts minus 3/4 of 1%. If such rate is less than  
4%, the rate of interest paid shall be 4%. Interest shall be computed on the average  
monthly balance in the account and shall be paid quarterly to the grantor by crediting  
to the reserve account the amount of the interest due.

While the grantor is to pay any and all taxes, assessments and other charges levied  
or assessed against said property, or any part thereof, before the same begin to bear  
interest and also to pay premiums on all insurance policies upon said property, such pay-  
ments are to be made through the beneficiary, as aforesaid. The grantor hereby authorizes  
the beneficiary to pay any and all taxes, assessments and other charges levied or imposed  
against said property in the amounts as shown by the statements thereof furnished by the  
collector of such taxes, assessments or other charges, and to pay the insurance premiums  
in the amounts shown on the statements submitted by the insurance carriers or their rep-  
resentatives and to withdraw the sums which may be required from the reserve account.  
If any, established for that purpose. The grantor agrees in no event to hold the beneficiary  
responsible for failure to have any insurance written or for any loss or damage resulting  
out of a defect in any insurance policy, and the beneficiary hereby is authorized, in the  
event of any loss, to compromise and settle with any insurance company and to apply any  
such insurance receipts upon the obligations secured by this trust deed. In computing the  
amount of the indebtedness for payment and satisfaction in full or upon sale or other

acquisition of the property by the beneficiary after default, any balance remaining in the  
reserve account shall be credited to the indebtedness. If any authorized reserve account  
for taxes, assessments, insurance premiums and other charges is not sufficient at any  
time for the payment of such charges as they become due, the grantor shall pay the  
deficit to the beneficiary upon demand, and if not paid within ten days after such demand,  
the beneficiary may at its option add the amount of such deficit to the principal of the  
obligation secured hereby.

Should the grantor fail to keep any of the foregoing covenants, then the  
beneficiary may at its option carry out the same, and all its expenditures there-  
for shall draw interest at the rate specified in the note, shall be repayable by  
the grantor on demand and shall be secured by the lien of this trust deed. In  
this connection, the beneficiary shall have the right in its discretion to complete  
any improvements made on said premises and also to make such repairs to said  
property as in its sole discretion it may deem necessary or advisable.

The grantor further agrees to comply with all laws, ordinances, regulations,  
covenants, conditions and restrictions affecting said property; to pay all costs,  
fees and expenses of this trust, including the cost of title search, as well as  
the other costs and expenses of the trustee incurred in connection with or  
in enforcing this obligation, and trustee's and attorney's fees actually incurred;  
to appear in and defend any action or proceeding purporting to affect the secur-  
ity hereof or the rights or powers of the beneficiary or trustee; and to pay all  
costs and expenses, including cost of evidence of title and attorney's fees in a  
reasonable sum to be fixed by the court, in any such action or proceeding in  
which the beneficiary or trustee may appear and in any suit brought by bene-  
ficiary to foreclose this deed, and all said sums shall be secured by this trust  
deed.

The beneficiary will furnish to the grantor on written request therefor an  
annual statement of account but shall not be obligated or required to furnish  
any further statements of account.

It is mutually agreed that:

1. In the event that any portion or all of said property shall be taken  
under the right of eminent domain or condemnation, the beneficiary shall have  
the right to commence, prosecute in its own name, appear in or defend any ac-  
tion or proceedings, or to make any compromise or settlement in connection with  
such taking and, if it so elects, to require that all or any portion of the money's  
payable as compensation for such taking, which are in excess of the amount re-  
quired to pay all reasonable costs, expenses and attorney's fees necessarily paid  
or incurred by the grantor in such proceedings, shall be paid to the beneficiary  
and applied by it first upon any reasonable costs and expenses and attorney's  
fees necessarily paid or incurred by the beneficiary in such proceedings, and the  
balance applied upon the indebtedness secured hereby; and the grantor agrees,  
at its own expense, to take such actions and execute such instruments as shall  
be necessary in obtaining such compensation, promptly upon the beneficiary's  
request.

2. At any time and from time to time upon written request of the be-  
neficiary, payment of its fees and presentation of this deed and the note for en-  
dorsement (in case of full reconveyance, for cancellation), without affecting the  
liability of any person for the payment of the indebtedness, the trustee may (a)  
consent to the making of any map or plat of said property; (b) join in granting  
any easement or creating and restriction thereon, (c) join in any subordination  
or other agreement affecting this deed or the lien or charge hereof; (d) reconvey,  
without warranty, all or any part of the property. The grantee in any reconvey-  
ance may be described as the "person or persons legally entitled thereto" and  
the recitals therein of any matters or facts shall be conclusive proof of the  
truthfulness thereof. Trustee's fees for any of the services in this paragraph  
shall be \$5.00.

3. As additional security, grantor hereby assigns to beneficiary during the  
continuance of these trusts all rents, issues, royalties and profits of the prop-  
erty affected by this deed and of any personal property located thereon. Until  
grantor shall default in the payment of any indebtedness secured hereby or in  
the performance of any agreement hereunder, grantor shall have the right to col-  
lect all such rents, issues, royalties and profits earned prior to default as they  
become due and payable. Upon any default by the grantor hereunder, the be-  
neficiary may at any time without notice, either in person, by agent or by a re-  
ceiver to be appointed by a court, and without regard to the adequacy of any  
security for the indebtedness hereby secured, enter upon and take possession of  
said property, or any part thereof, in its own name sue for or otherwise collect  
the rents, issues and profits, including those past due and unpaid, and apply  
the same, less costs and expenses of operation and collection, including reason-  
able attorney's fees, upon any indebtedness secured hereby, and in such order  
as the beneficiary may determine.

5. The grantor shall notify beneficiary in writing of any sale or contract for sale of the above described property and furnish beneficiary on a form supplied it with such personal information concerning the purchaser as would ordinarily be required of a new loan applicant and shall pay beneficiary a service charge.

6. Time is of the essence of this instrument and upon default by the grantor in payment of any indebtedness secured hereby or in performance of any obligation hereunder, the beneficiary may declare all sums secured hereby immediately due and payable by delivery to the trustee of written notice of default and election to sell the trust property, which notice trustee shall cause to be duly filed for record. Upon delivery of said notice of default and election to sell, the beneficiary shall deposit with the trustee this trust deed and all promissory notes and documents evidencing expenditures secured hereby, whereupon the trustee shall fix the time and place of sale and give notice thereof as then required by law.

7. After default and any time prior to five days before the date set by the Trustee for the Trustee's sale, the grantor or other person so privileged may pay the entire amount then due under this trust, and thereby the obligation secured thereby (including costs and expenses actually incurred in enforcing the terms of the obligation and trustee's and attorney's fees not exceeding \$50.00 each) other than such portion of the principal as would not then be due had no default occurred and thereby cure the default.

8. After the lapse of such time as may then be required by law following the recording of said notice of default and giving of said notice of sale, the trustee shall sell said property at the time and place fixed by him in said notice of sale, either as a whole or in separate parcels, in such order as he may determine, at public auction to the highest bidder for cash, and the money of the sale, after deducting the expenses of the sale, shall be paid to the holder of the said portion of said property at the time of sale. Trustee may postpone the sale of all or any portion of said property by public announcement at such time and place of sale and from time to time thereafter may postpone the sale by public an-

nouncement at the time fixed by the preceding postponement. The trustee shall deliver to the purchaser his deed in form as required by law, conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, excluding the trustee but including the grantor and the beneficiary, may purchase at the sale.

9. When the Trustee sells pursuant to the powers provided herein, the trustee shall apply the proceeds of the trustee's sale as follows: (1) To the expenses of the sale including the compensation of the trustee, and a reasonable charge by the attorney; (2) To the obligation secured by the trust deed; (3) To all persons having recorded liens subsequent to the sale of the trust property; (4) To the costs of the trustee in the trust deed as their interests appear in the deed or to his priority; (5) The surplus, if any, to the grantor of the trust deed or to his successor in interest entitled to such surplus.

10. For any reason permitted by law, the beneficiary may from time to time appoint a successor or successors to any trustee named herein, or to any successor trustee appointed hereunder. Upon such appointment and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by the beneficiary, containing reference to this deed and its place of record, which, when recorded in the office of the county clerk or recorder of the county or counties in which the property is situated, shall be conclusive proof of the proper appointment of the successor trustee.

11. Trustee accepts this trust when this deed, duly executed and acknowledged is made a public record, as provided by law. The trustee is not obligated to notify any party of the pendency of pending sale under any other deed of trust or of any action or proceeding in which the grantor, beneficiary or trustee shall be a party unless such action or proceeding is brought by the trustee.

12. This deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees devisees, administrators, executors, successors and assigns. The term "beneficiary" shall mean the holder and owner, including pledgee, of the note secured hereby, whether or not named as a beneficiary herein. In construing this deed and whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

IN WITNESS WHEREOF, said grantor has hereunto set his hand and seal the day and year first above written.

Gary D Smelcer (SEAL)

STATE OF OREGON

County of **Klamath**. } ss

THIS IS TO CERTIFY that on this 2nd day of June, 1978, before me, the undersigned, a Notary Public in and for said county and state, personally appeared the within

GARY D. SMELCER

to me personally known to be the identical individual named in and who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

NOTARY PUBLIC  
(SEAL)  
PUBLIC

Susan K. Karsch  
Notary Public for Oregon  
My commission expires: 12-6-81

**TRUST DEED**

TO  
**KLAMATH FIRST FEDERAL SAVINGS  
AND LOAN ASSOCIATION**  
Beneficiary

After Recording Return To:  
KLAMATH FIRST FEDERAL SAVINGS  
AND LOAN ASSOCIATION

50.64 str

STATE OF OREGON }  
County of Klamath } ss.

I certify that the within instrument was received for record on the 2nd day of June, 1978, at 3:47 o'clock P.M., and recorded in book M78 on page 11844 Record of Mortgages of said County.

Witness my hand and seal of County  
affixed.

Wm. D. Milne  
County Clerk

By Bernetha Y. Hirsch Deputy

Fee \$6.00

**REQUEST FOR FULL RECONVEYANCE**

To be used only when obligations have been paid.

TO: William Sisomere, \_\_\_\_\_, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by said trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of said trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by said trust deed (which are delivered to you herewith together with said trust deed) and to reconvey, without warranty, to the parties designated by the terms of said trust deed the estate now held by you under the same.

Klamath First Federal Savings & Loan Association, Beneficiary

DATED: \_\_\_\_\_ 19\_\_\_\_ by \_\_\_\_\_

FORM NO. OF-0223

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